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| 09/488,527 | 01/21/2000 | Kesayoshi Iguchi | 0102/0095 | 4569 |
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| LOUIS WOO LAW OFFICE OF LOUIS WOO 717 NORTH FAYETTE STREET ALEXANDRIA, VA 22314 | | | RUDY, ANDREW J | |
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/488,527

Filing Date: January 21, 2000

Appellant(s): IGUCHI ET AL.

Louis Woo, Esq.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 30 May 2006 appealing from the Office action mailed 26 January 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,922,435 CAHLANDER 5-1990

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-33 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. The storing of setting data for every article, processing of or preparing of orders, each critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976).

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Appellant's claims 1-33 are not understood. Appellant's REMARKS have been reviewed, but are not convincing.

Appellant needs another step of processing or preparing an order to satisfy the 35 U.S.C. 112 requirements. It is further noted that Appellant's steps, as presently claimed, need not occur in any sequential order. As is, the claim language is not clear.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-33 are rejected under 35 U.S.C. 101 because the claimed invention lacks patentable utility. The claim language, i.e. claim 1, does not provide any concrete, useful or tangible results. Appellant claims no monitor. One could merely draw a picture on a piece of paper or a chalk board to display the quantities of every article to be prepared or sets of input ordered articles at non-peak times. It is noted that the independent claims 1, 31 and 32 may be performed by orally and/or by hand. There is no recognizable output of data, e.g. preparing orders as a result of the previous method claim steps.

Claim Rejections - 35 USC § 103

Claims 1-33, as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Savage, US 6,026,372, in view of Cahlander, US 4,922,435.

Appellant is directed towards the December 10, 2002 Final Office Action.

It is noted Appellant has not traversed the Official Notice's from neither the October 23, 2001 Office Action or the December 10, 2002 Office Action. Thus, the Official Notice from each is deemed conceded by Applicant.

(10) Response to Argument

Claim Rejections - 35 USC § 112

Appellant's REMARKS have been reviewed, but are not convincing with regards to the 35 U.S.C. 112, first paragraph, rejection. Applicant does not have any tangible result claimed. No order is processed, nor does any type of entity, e.g. a monitor, display any ordered articles. Though Appellant may view each recited element as critical or essential to the practice of the instant invention, the claims are, nonetheless, incomplete and lacking the final step to bring it in conformance with the requirements for 35 U.S.C. 112, first paragraph.

Claims 1-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Appellant's claims 1-33 are not understood in the present form.

The claim language, as drafted, is not clear. As such, it precludes one from ascertaining the metes and bounds of the invention.

Appellant needs another step of processing or preparing an order to satisfy the 35 U.S.C. 112 requirements. It is further noted that the Examiner does not state that Appellant's steps need to occur in a specific sequential order. The Examiner was simply pointing out that as presently claimed no sequential order is presently claimed by Appellant.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-33 are rejected under 35 U.S.C. 101 because the claimed invention lacks patentable utility. The claim language, i.e. claim 1, does not provide any concrete, useful or tangible results. Appellant's REMARKS from the Brief are noted, but not agreed with. Applicant claims no monitor. One could merely draw a picture on a piece of paper or a chalk board to display the quantities of every article to be prepared or sets of input ordered articles at non-peak times. It is noted that the independent claims 1, 31 and 32 may be performed by orally and/or by hand. There is no recognizable output of data, e.g. preparing orders as a result of the previous method claim steps. Thus, the Examiner evidences no practical applications.

Claim Rejections - 35 USC § 103

Claims 1-33, as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Savage, US 6,026,372, in view of Cahlander, US 4,922,435.

Savage shows a system for food predicting system and initiating cooking of the food. Savage does not show a particular means to initiate the update of the display. The Examiner takes Official Notice that toggle switches and rotary switches are known to allow operator control of a computer display. The use of toggle or rotary switch at the cooking location to allow the chef to update the count of items needed would have been obvious to one of ordinary skill in the art to allow batch process of cooking each item type without a constantly changing display (Official Notice taken from the October 23, 2001 Office Action).

Savage does not show the use of a weekly calendar. However, an allowance for daily variation is made at Col. 3, lines 5-12. The use of a larger scale calendar in the device of Savage would have been obvious to one of ordinary skill in the art in order to accurately supply a desired quantity of food with minimal supervision by a manager.

Cahlander et al., US 4,922,435; Cahlander et al., US 5,132,914 or Cahlander et al., US 5,172,328 show a method for cooking food orders at peak and non-peak time periods using computer controlled command signals (e.g. cols. 2-3 and claims 33-36 of Cahlander et al., US 5,172,328).

To have provided a method for displaying peak and non-peak order of food and computer controlled command signals for the food predicting system of Savage would have been obvious to one of ordinary skill in the art in view of either Cahlander et al., US 4,922,435; Cahlander et al., US 5,132,914 or Cahlander et al., US 5,172,328. To do so would provide the well known option of using computer controlled command signals used in food systems. It is noted that claims 1-15, 31 and 32 may be executed by hand. To have done such for Savage, in view of the Cahlander references would have been obvious to one of ordinary skill in the art. Doing such would use well known customer order processing apparatus (Official Notice taken from the December 10, 2002 Office Action).

It is noted Appellant has not traversed the Official Notice's from neither the October 23, 2001 Office Action or the December 10, 2002 Office Action. Thus, the Official Notice from each is deemed conceded by Appellant.

Appellant's REMARKS from the Brief are noted, but not convincing. In short, Applicant's claim language is in such disarray that the full meets and bounds are deemed meet by the above noted combination of Savage in view of Cahlander et al., US 4,922,435; Cahlander et al., US 5,132,914 or Cahlander et al., US 5,172,328.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Andrew Joseph Rudy



Conferees:

Hyung Sub Sough 

Alexander Kalinowski 